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No. 443

Supreme Court, U.S.

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In the Supreme Court of the United States

October Term, 1944

INTERCOUNTY OPERATING CORPORATION, and SALONGA
F FARMS, INC.,

Plaintiffs-Appellants,

against

THE COUNTY OF NASSAU,

Respondent,

and

ATLANTIC MUNICIPAL CORPORATION, et al., etc.,
Defendants.

BRIEF OPPOSING THE ISSUANCE OF A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE
STATE OF NEW YORK

MILTON PINKUS,
Attorney for Respondent.

EUGENE R. HURLEY,
of counsel.

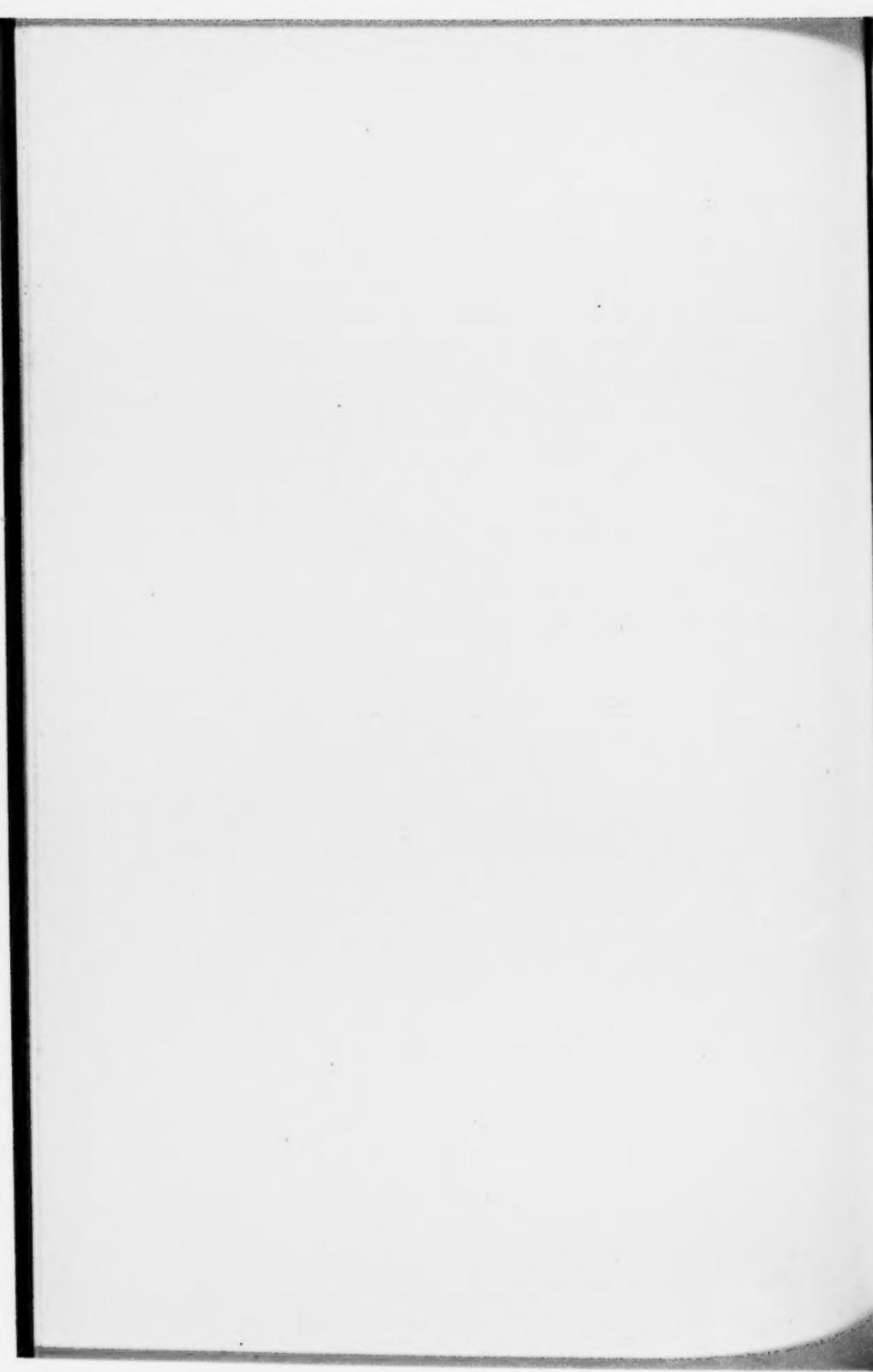


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RESPONDENT'S BRIEF

POINT I.

CHAPTER 679 OF THE LAWS OF 1941, PROVIDING FOR THE ENFORCEMENT OF SUBSEQUENT TAXES, COULD NOT IMPAIR THE OBLIGATION OF THE PLAINTIFFS' CONTRACT WHICH WAS EXPRESSLY MADE SUBJECT TO SUCH TAXES.

There has been no impairment of the contract between the County Treasurer (not the County, as stated in Petitioners' brief) and the Petitioners. The purchase was made subject to subsequent taxes. The Petitioners never acquired any right to enforce their certificates against holders of subsequent tax liens.

The contract with the County Treasurer did not grant to the purchasers any particular time within which to pay the 1939 tax, then a lien on the property purchased and past due. There was no representation as to when these taxes would be sold or as to how they would be enforced. In fact, no one knew, or could know what measures the Legislature might adopt for its collection and these means were exclusively in legislative discretion (*Gautier v. Ditmars*, 204 N. Y. 20, 27).

The contract contained no express stipulation that the 1939 tax would be enforced just as earlier taxes had been enforced. Nor could there be any such stipulation implied (*Charles River Bridge case*, 11 Peters, 420, 529; 9 L. ed. 773, 825).

Since the Legislature was not obliged by the contract to continue the collection of taxes in any particular manner, the change accomplished by Chapter 679 of the Laws of 1941 could not impair the obligation of any contract.

POINT II.

THE COMPLAINT DOES NOT SHOW ANY CONTROVERSY BETWEEN THE PARTIES.

There is no controversy between the parties, much less one involving the Constitution. Any jural relationship is extremely remote and is entirely contingent. About the only point of contact is that both Plaintiffs and Defendants claim to have valid tax titles to the same parcels of land.

Either or both may be invalid or void, or may be extinguished by redemption, rendering any judgment here meaningless.

The action is improper in form, calling merely for an opinion as to the rights of the parties, if a controversy should ever arise between them.

THE PETITION SHOULD BE DENIED.

Respectfully submitted,

MILTON PINKUS,
Attorney for Respondent.

EUGENE R. HURLEY,
Of counsel.